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Kathy Dwyer
1525 Papworth Ave.
Metairie, LA 70005

March 12, 2021

Louisiana Ethics Administration Program
P.O. Box 4368
Baton Rouge, Louisiana 70821

Dear Louisiana Board of Ethics Members:

I am the recently elected Chair of the State Advisory Committee (SAC) for the Louisiana Office for Citizens with Developmental Disabilities (OCDD). We would appreciate an advisory opinion on membership conflict of interest and the frequently welcomed practice of abstaining when a conflict of interest is present. The questions at hand are as follows.

1. Would employees of an entity with a contract with a regional Human Services Authority/Districts (HSA/D) present a conflict of interest if they were to serve as voting members on their respective Regional Advisory Committees (RAC) for the regional Human Services Authority/District (HSA/D)?
2. Would employees of an entity with a contract with the Louisiana Department of Health/Office for Citizens with Developmental Disabilities (LDH/OCDD) present a conflict of interest if they were to serve as voting members on the State Advisory Committee (SAC) for the Louisiana Office for Citizens with Developmental Disabilities?
3. Would employees of an entity with a contract with the Louisiana Developmental Disabilities Council (LaDDC) which is under the Louisiana Department of Health present a conflict of interest if they were to serve as voting members on the State Advisory Committee (SAC) for the Louisiana Office for Citizens with Developmental Disabilities?
4. Would a family member who is required to sign a contract with their regional Human Services Authority/District (HSA/D) in order to receive services from the HSA/D present a conflict of interest when serving as a member on their Regional Advisory Committee for their HSA/D?
5. Would employees of a local school system and regional office for Louisiana Rehabilitation Services present a conflict of interest when serving as a voting member on a Regional Advisory Committee (RAC) or the State Advisory Committee (SAC) for the Louisiana Office for Citizens with Developmental Disabilities?

6. If there is a conflict of interest, would it be appropriate for those with a conflict of interest to continue to serve on the committees as voting members as long as they abstain from voting on issues that present a conflict?

Per the Louisiana Developmental Disabilities Law (DD) Law 28:451.3.D-G (see Attachment 1 or go to: www.legis.la.gov/legis/Law.aspx?p=y&d=321093):

D. (1) Human services authorities and districts shall maintain advisory committees. These advisory committees shall perform all of the following functions:

(a) Provide public input into the authority or district planning process and comment on regulations proposed by the office.

(b) Receive timely information on the budgets of their respective human services authorities and districts, in addition to information on implementation of all services and quality assurance reports by those authorities and districts, and advise the authorities and districts.

(c) Collaborate with the human services authorities and districts to develop outreach plans for each geographic area. Such outreach plans shall provide for public dissemination of information regarding developmental disabilities and the services available through the human services authorities and districts.

(2) Each advisory committee shall be composed of a minimum of twelve members who represent positions and philosophies held by various groups and advocates for persons with developmental disabilities. The membership of each advisory committee shall include, but not be limited to:

(a) Persons with developmental disabilities.

(b) Parents and family members representing a cross section of developmental disabilities services.

(c) Private providers.

(d) Representatives of advocacy organizations and community stakeholders representing a cross section of developmental disabilities services.

(e) Public providers and administrators of administrative units and human services authorities and districts, who may be appointed as ad hoc, non-voting members of the advisory committee.

E. The local authority, organized as a human services authority or district, shall discharge the following duties:

(1) Appoint the committee members from names submitted by consumer, provider, and advocacy groups, with the approval of the assistant secretary of the office, who shall ensure that committee composition is in compliance with the state law.

(2) Ensure that at least sixty percent of the membership of each committee is composed of persons with developmental disabilities and parents and family members representing a cross section of developmental disabilities services.

F. (1) The office shall establish a state advisory committee which shall be organized as follows:

(a) The state advisory committee shall consist of at least two people from each human services authority or district advisory committee.

(b) At least sixty percent of the membership shall be comprised of persons with developmental disabilities and parents and family members representing a cross section of developmental disabilities services.

(c) The membership of the state advisory committee shall include at a minimum, but not be limited to the following:

(i) Persons with developmental disabilities.

(ii) Parents and family members representing persons who receive a cross section of developmental disabilities services.

(iii) Private providers.

(iv) A representative of the American Federation of State, County, and Municipal Employees Council #17.

(v) Representatives of advocacy organizations representing a cross section of developmental disabilities services.

(vi) Public providers and administrators of local administrative units and human services authorities and districts, who may be appointed as ad hoc, non-voting members of the state advisory committee.

(2) The assistant secretary of the office shall appoint the committee members, with the approval of the secretary of the department, from names submitted by the regional advisory committees.

(3) (a) The state advisory committee shall coordinate with all human services authority and district advisory committees, and shall use data provided by those committees in the deliberations of the committee.

(b) The state advisory committee shall provide public input to the office regarding proposed regulations and the development of state planning and budget.

G. The regulations promulgated by the office pursuant to this Section shall:

(1) Promote coordination among the office, human services authorities and districts, and state and local advisory committees.

(2) Promote responsiveness by the office and human services authorities and districts to input from persons who receive developmental disabilities services and family members and providers regarding the delivery of services.

We have received two opinions: one from legal counsel for a regional OCDD Human Services Authority and another from legal counsel for the Louisiana Department of Health (LDH) (see Attachment 2). The legal counsel for the regional Human Services Authority advised that those with conflict of interests can serve as voting members as long as they recuse themselves from issues that would present a conflict. The regional Human Services Authority legal counsel then

wrote a draft for revised Bylaws stating the following to assure all members adhere to the prohibitions and requirements of the Louisiana Code of Governmental Ethics (see Attachment 3: Article 4, Section 3 on page 4).

Section 3 All members shall adhere to the prohibitions and requirements of the Louisiana Code of Governmental Ethics, LA R.S. 42:1101 et. seq., including without limitation Section 111(C)(2)(d) with regard to conflicts of interest. All members shall recuse themselves from any JP DD RAC discussion, vote, or other such matter in which they themselves, an immediate family member, or the organization they represent has a business, contractual, or financial stake.

However, LDH legal counsel has advised it would be a conflict of interest but suggested we request an Ethics Board opinion when we inquired about whether or not those members with conflicts would be able to continue to serve on the RACs and SAC if they abstained on issues that present a conflict. It should also be noted that members of RACs and SAC are not paid to serve on the RACs or SAC.

For example, a few of our members are employees of various regional Families Helping Families (FHF) Resource Centers that are private nonprofit organizations and have contracts with the Louisiana Department of Health/Office of Citizens with Developmental Disabilities (LDH/OCDD) and the Louisiana Developmental Disabilities Council (LaDDC). Some FHF Resource Centers have contracts with their regional Human Services Authority/District (HSA/D). Both the RACs and SAC are solely advisory committees and charged with providing public input but are not authorized to approve budgets or contracts. Additionally, Families Helping Families Resource Centers employ individuals with disabilities as well as their family members to assist other individuals with disabilities and their families with navigating various service systems and providing resources. So they have vast public knowledge of what individuals with disabilities and their families have experienced as the "public" with regional and statewide services and are a vital resource of public input for the RACs and SAC.

If, for example, an FHF employee is prohibited from being a voting member because of a contractual relationship with LDH/OCDD, LDDC, and/or their respective regional Human Services Authority/District, then it would also bring to bear the question if the same would apply to individuals with disabilities and their families in each region who are required to sign a contract with their respective regional Human Services Authority/District (HSA/D) in order to receive certain services from the HSA/D. At the same time, it is these families that the Developmental Disabilities Law and the State Advisory Committee (SAC) Bylaws state should make up 60% of the composition of the Regional Advisory Committees (RAC) and State Advisory Committee (see Attachment 4) and would appear to defeat the purpose of the State and Regional Advisory Committees if these families were not allowed to serve on their regional RAC and SAC.

Additionally, because regional Human Services Districts/Authorities are charged with providing services for toddlers and their families transitioning from Early Steps to OCDD Home and

Community Based Waiver Services (HCBS) as well as students with developmental disabilities transitioning from high school to adult and employment services, it is the desire of some Regional Advisory Committees (RAC) to include representatives from regional Early Steps Single Point of Entry (SPOE) offices who are private nonprofit organizations that contract with LDH/OCDD; Local Education Agencies (LEAs), e.g., Jefferson Parish Public Schools; and regional offices of Louisiana Rehabilitation Services (LRS) to be members so that RACs may benefit from their expertise in early intervention, K-12 education, and employment services, respectively. These agencies are also a vital part of RACs and SACs. We are aware R.S. 451.3(D)(2)(3) and our Bylaws (see Attachments 3 and 4) state that representatives from these agencies may be appointed as ad hoc members but we interpret the word "may" as being optional, as opposed to absolute.


We are also aware of several other state committees/councils that have employees from various organizations as well as representatives from public providers (i.e., state and local agencies) with similar relationships as described above and are allowed to abstain/recuse themselves when appropriate. That is:

1. Louisiana Rehabilitation Council
2. Special Education Advisory Board
3. Louisiana Developmental Disabilities Council

If it is determined abstaining/recusal cannot be utilized, especially for families who are required to contract with the HSD/A in order to receive services, it would make it extremely difficult to find and maintain the membership composition on the state and regional advisory committees required by Louisiana's Developmental Disabilities Law.

We appreciate your time and effort in reviewing our request as well as respect and honor your opinion rendered.

Sincerely,



Kathy Dwyer, Chair
Louisiana OCDD State Advisory Committee
1525 Papworth Ave., Metairie, LA 70005
H: (504) 833-2439; C: (504) 439-0212

Attachments

1. Louisiana Developmental Disabilities Law
2. Louisiana Department of Health Legal Counsel Opinion
3. Draft Revised Bylaws for Jefferson Parish Regional Advisory Committee
4. State Advisory Committee Bylaws

FAX Cover Sheet

TO: Louisiana Ethics Administration Program

FAX NO.: 225-3817271

DATE: March 24, 2021

NO. of PAGE (Including Cover Sheet): 6

FROM: Kathy Dwyer
1525 Papworth Avenue
Metairie, LA 70005
504-833-2439 – home
504-439-0212 – cell

Attached please find 5 pages of my letter to the Louisiana Ethics Board for an opinion to be heard at your next meeting. As advised when I called your office today, attachments are not included but can and will be sent via email once a docket number is assigned.

Thank you so much,

Kathy Dwyer, Chair
Louisiana State Advisory Committee
for Developmental Disabilities



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